

CLERK OF THE COURT

1 **NEOJ**

GORDON SILVER

2 ERIKA PIKE TURNER

Nevada Bar No. 6454

3 Email: eturner@gordonsilver.com

DYLAN T. CICILIANO

4 Nevada Bar No. 12348

Email: dciciliano@gordonsilver.com

5 3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

6 Tel: (702) 796-5555

Fax: (702) 369-2666

7 Attorneys for Plaintiff, Cross-Defendant and Third-Party Defendants

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 ROEN VENTURES, LLC,

11 Plaintiff,

12 vs.

13 MEDICAL MARIJUANA, INC., DOE

14 Individuals I-X; and ROE Entities I-X, inclusive,

Defendants.

15 MEDICAL MARIJUANA, INC.,

16 Counterclaimant,

17 vs.

18 ROEN VENTURES, LLC,

19 Cross-Defendant,

20 MEDICAL MARIJUANA, INC.,

21 Third-Party Plaintiff,

22 vs.

23 BART P. MACKAY, an individual; MICHAEL
24 MONA, JR., an individual; MICHAEL MONA,
III, an individual; MAI DUN LIMITED LLC, a
25 Nevada limited liability company; MERCIA
HOLDINGS LLC, a Nevada limited liability
company; MIK-NIK TRUST, and JOHN DOES
26 I, DOE Defendants II-X, inclusive, and ROE
27 CORPORATIONS XI-XX, inclusive,

Third-Party Defendants.

CASE NO. A-14-702789-B
DEPT. XXV

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an **Order Granting Plaintiff's Motion for Declaratory**
2 **Relief Under NRS Chapter 30 and Partial Summary Judgment and Denying Medical**
3 **Marijuana, Inc.'s Countermotion for NRCP 56(F) Relief**, a copy of which is attached hereto,
4 was entered in the above-entitled matter on the 5th day of November, 2014.

5 Dated this 5th day of November, 2014.

6 GORDON SILVER

7 
8 ERIKA PIKE TURNER

9 Nevada Bar No. 6454

10 DYLAN T. CICILIANO

11 Nevada Bar No. 12348

12 3960 Howard Hughes Pkwy., 9th Floor

13 Las Vegas, Nevada 89169

14 Tel: (702) 796-5555

15 Attorneys for Plaintiff, Cross-Defendant
16 and Third-Party Defendants
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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 5th day of November, 2014, she served a copy of the **Notice of Entry of Order**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

Vernon A. Nelson, Jr., Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
vernon.nelson@lewisbrisbois.com



Anna Diallo, an employee of
GORDON SILVER

ORIGINAL

Alvin D. Quinn

CLERK OF THE COURT

1 **ORDG**
2 GORDON SILVER
3 ERIKA PIKE TURNER
4 Nevada Bar No. 6454
5 Email: eturner@gordonsilver.com
6 DYLAN T. CICILIANO
7 Nevada Bar No. 12348
8 Email: dciciliano@gordonsilver.com
9 3960 Howard Hughes Pkwy., 9th Floor
10 Las Vegas, Nevada 89169
11 Tel: (702) 796-5555
12 Fax: (702) 369-2666
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DISTRICT COURT
CLARK COUNTY, NEVADA

14 ROEN VENTURES, LLC,

15 Plaintiff,

16 vs.

17 MEDICAL MARIJUANA, INC., DOE
18 Individuals I-X; and ROE Entities I-X, inclusive,

19 Defendants.

20 MEDICAL MARIJUANA, INC.,

21 Counterclaimant,

22 vs.

23 ROEN VENTURES, LLC.,

24 Cross-Defendant,

25 MEDICAL MARIJUANA, INC.,

26 Third-Party Plaintiff,

27 vs.

28 BART P. MACKAY, an individual; MICHAEL
MONA, JR., an individual; MICHAEL MONA,
III, an individual; MAI DUN LIMITED LLC, a
Nevada limited liability company; MERCIA
HOLDINGS LLC, a Nevada limited liability
company; MIK-NIK TRUST, and JOHN DOES
I, DOE Defendants II-X, inclusive, and ROE
CORPORATIONS XI-XX, inclusive,

Third-Party Defendants.

CASE NO. A-14-702789-B
DEPT. XXV

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DECLARATORY RELIEF
UNDER NRS CHAPTER 30 AND
PARTIAL SUMMARY JUDGMENT AND
DENYING MEDICAL MARIJUANA,
INC.'S COUNTERMOTION FOR NRCP
56(F) RELIEF.**

Date of Hearing: October 14, 2014
Time of Hearing: 9:00 a.m.

1 The Court having reviewed and considered the Motion for Declaratory Relief Under
2 Nevada Revised Statute ("NRS") Chapter 30 and Partial Summary Judgment (the "Motion"),
3 filed by Plaintiff ROEN VENTURES, LLC ("Plaintiff") and the Declaration of Bart P. Mackay
4 (the "Mackay Declaration") filed in support thereof; Defendant Medical Marijuana, Inc.
5 ("MJNA") Opposition to the Motion (the "Opposition"), MJNA's Countermotion pursuant to
6 Nevada Rule of Civil Procedure ("NRCp") 56(f), including the Declaration of Vernon A. Nelson
7 and Supplemental Declaration of Vernon A. Nelson in support thereof; and the oral argument of
8 counsel at the hearing of this matter, and good cause appearing therefore, finds as follows:

9 **DECLARATORY RELIEF UNDER NRS 30**

10 A person with an interest under a contract may request that the Court interpret the
11 contract under the Uniform Declaratory Judgments Act. NRS 30.040/ Declaratory relief is
12 appropriately used at the onset of litigation when the terms of the contract are unambiguous and
13 such relief can narrow the issues for trial, and, See generally Ins. Corp. of Am. v. Rubin, 107
14 Nev. 610, 612, 818 P.2d 389, 390 (1991) (holding that the interpretation of a contractual term is
15 appropriate on summary judgment.).

16 The Motion, supported by the Mackay Declaration and the attachments thereto,
17 establishes that between December 17, 2012, and January 23, 2013, MJNA, by and through its
18 Chief Executive Officer Michelle Sides, executed a \$400,000.00 convertible promissory note
19 (the "\$400,000 Note"), an \$80,750.00 convertible promissory note (the "\$80,750 Note"), and a
20 \$500,000.00 convertible promissory note (the "\$500,000 Note," collectively with the \$400,000
21 Note and \$80,750 Note, the "Notes") in favor of Plaintiff. (See Motion at Exhs. 1-A, 1-B, 1-C,
22 on file herein). The Court finds that each of the Notes constitutes a contract between Plaintiff and
23 MJNA, as set forth in further detail below, and therefore declaratory relief is available under
24 NRS 30.040.

25 Declaratory relief is appropriate when there is a justiciable controversy, the controversy
26 is between people with adverse interests, the party seeking relief has a legal interest in the
27 controversy, and "the harm alleged by the party seeking review is sufficiently concrete, rather
28 than remote or hypothetical . . ." Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986);

1 see also Hall v. Sun City Summerlin Cmty. Ass'n, Inc., 57795, 2012 WL 4846485 (Nev. Oct. 9,
2 2012); Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). A
3 "justiciable controversy" is "a controversy in which a claim of right is asserted against one who
4 has an interest in contesting it." Bryan, 102 Nev. at 525, 728 P.2d at 444; see also UMC
5 Physicians' Bargaining Unit of Nevada Serv. Employees Union v. Nevada Serv. Employees
6 Union/SEIU Local 1107, AFL-CIO, 124 Nev. 84, 93, 178 P.3d 709, 715 (2008). A justiciable
7 controversy exists because Plaintiff contends that it is entitled to convert debt under the Notes to
8 MJNA shares and MJNA disputes the enforceability of the Notes and Plaintiff's right to convert
9 any debt into MJNA stock under the terms of the Notes. Plaintiff and MJNA likewise have
10 adverse legal interests in the outcome of the claim. Phelps v. Second Judicial Dist. Court, In &
11 For Cnty. of Washoe, 106 Nev. 917, 920, 803 P.2d 1101, 1102 (1990)(parties named in a
12 declaratory relief action must have competing interests).

13 The request for declaratory relief is ripe as Plaintiff has sought to enforce the provisions
14 of the Notes and MJNA has refused to honor those requests. Herbst Gaming, Inc., 122 Nev. at
15 887, 141 P.3d at 1231(concluding that the harm need not to have already been suffered, just
16 probable); NRS 30.050("A contract may be construed either before or after there has been a
17 breach thereof."). As the Court finds that Plaintiff has met all the necessary elements for
18 declaratory relief under the Uniform Declaratory Judgments Act, the Court elects to construe the
19 rights of the parties under the Notes.

20 Courts may not rewrite contracts for any purpose, including "to relieve parties from bad
21 deals." Series AGI W. Linn of Appian Grp. Investors DE LLC v. Eves, 158 Cal. Rptr. 3d 193,
22 199-200 (Cal. App. 2013); Rosen v. State Farm Gen. Ins. Co., 70 P.3d 351, 353 (Cal. 2003) "It is
23 widely recognized that the courts are not at liberty to revise an agreement under the guise of
24 construing it. Neither abstract justice nor the rule of liberal interpretation justifies the creation of
25 a contract for the parties which they did not make themselves." Series AGI W. Linn of Appian

1 Grp. Investors DE LLC, 158 Cal. Rptr. 3d at 200 (quoting Hinckley v. Bechtel Corp. (1974) 41
2 Cal.App.3d 206, 210, 116 Cal.Rptr. 33, 36 (Cal. App. 1974)).¹

3 The Notes unequivocally provide that Plaintiff has the right to "convert any or all of the
4 Principal and/or Interest" into MJNA shares at a cost of \$0.03 per share for the \$400,000 Note
5 and \$500,000 Note and \$0.09 per share for the \$80,750 Note. (Motion at Exh. 1-A, 1-B, 1-C).
6 Plaintiff provided admissible, undisputed evidence of its performance under the Notes and
7 MJNA's default under the Notes. (*See infra*). Pursuant to the Notes, if Plaintiff elected to convert
8 any of the amounts due to MJNA shares, MJNA was required to tender the share certificates to
9 Plaintiff within three (3) business days. (Motion at Exh. 1-A, 1-B, 1-C).

10 IT IS HEREBY ORDERED that Plaintiff's Motion for Declaratory Relief Under NRS
11 Chapter 30 is GRANTED. The Court finds that the Notes unambiguously provide that Plaintiff
12 has the right to convert debt due and owing under the Notes into MJNA shares, and MJNA has
13 an obligation to issue MJNA shares to Plaintiff in accordance with the Notes.

14 SUMMARY JUDGMENT

15 A party may move for summary judgment twenty days after the commencement of an
16 action. NRCP 56(a). Summary judgment pursuant to NRCP 56(c) is appropriate where the
17 "pleadings . . . show that there exists no genuine issue as to any material fact, and that the
18 moving party is entitled to judgment as a matter of law." Bird v. Casa Royale West, 97 Nev. 67,
19 69, 624 P.2d 17, 18 (1981). The party moving for summary judgment "bears the initial burden of
20 production to show the absence of a genuine issue of material fact." See Celotex v. Catrett, 477
21 U.S. 317, 323 (1986); *see also* Cuzze v. University and Community College System of Nevada,
22 123 Nev. 598, 172 P.3d 131, 134 (2007); Wood v. Safeway, Inc., 121 Nev. 724, 731-32, 121
23 P.3d 1026, 1031 (2005) (adopting the summary judgment standard set forth in Celotex and other
24 Supreme Court decisions). If such a showing is made, then the party opposing summary
25 judgment assumes a burden of production to show the existence of a genuine issue of material
26 fact. See Celotex, 477 U.S. at 331; Wood, 121 Nev. at 732, 121 P.3d at 1031; Maine v. Stewart,

27
28 ¹ Pursuant to the terms of the Notes, they are to be construed in accordance with California law.

109 Nev. 721, 726-27, 857 P.2d 755, 758-59 (1993).

In ruling on a motion for summary judgment, a trial court can only consider admissible evidence. NRCP 56(e); In re Cay Clubs, 130 Nev. Adv. Op. 14, 319 P.3d 625, 635 (2014), reh'g denied (Apr. 30, 2014); In re Oracle Corp. Sec. Litig., 627 F.3d 376, 385 (9th Cir. 2010); Orr v. Bank of Am., NT & SA, 285 F.3d 764, 773 (9th Cir. 2002) ("A trial court can [] consider [only] admissible evidence in ruling on a motion for summary judgment."); Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1181 (9th Cir.1988). A party opposing summary judgment may not rest upon mere allegations or denials but must present admissible facts that create a genuine issue for trial. NRCP 56(e). Declarations and affidavits in support of and in opposition to a motion for summary judgment must be based on personal knowledge, must present admissible facts, and must establish that the affiant or declarant is competent to testify to the matters stated therein. Id.

Plaintiffs request that the Court grant summary judgment on its cause of action for breach of contract. To succeed on its claim, Plaintiff must establish through admissible evidence the following elements: (1) the existence of the contract, (2) Plaintiff's performance under the contract, (3) MJNA's breach, and (4) resulting damage to Plaintiff. Oasis W. Realty, LLC v. Goldman, 250 P.3d 1115, 1121 (Cal. 2011); Durell v. Sharp Healthcare, 108 Cal. Rptr. 3d 682, 697 (Cal. Ct. App. 2010).

1. The Notes are binding contracts.

Plaintiff alleges that the Notes are binding contracts. The authenticity of the Notes is not disputed by MJNA. The Court finds that the Notes contain all the necessary elements of a contract, such that Plaintiff has demonstrated the existence of a contract. *See generally Hecimovich v. Encinal Sch. Parent Teacher Org.*, 137 Cal. Rptr. 3d 455, 475 (Cal. App. 2012)(finding that offer, acceptance, and consideration are necessary elements of any contract).

While MJNA's counsel argues that MJNA never intended the Notes to be binding contracts, MJNA does not submit a declaration or affidavit from Ms. Sides (who drafted and executed the Notes on behalf of MJNA) or anyone else with personal knowledge setting forth the same. Instead, MJNA relies solely on the declaration and supplemental declaration of its counsel, Vernon Nelson. Mr. Nelson's declarations fail to comply with NRCP 56(e). Mr. Nelson's

1 declarations do not affirmatively show that he is competent to testify to the allegations contained
2 therein. Mr. Nelson does not have personal knowledge of the facts surrounding the execution of
3 the Notes. Mr. Nelson's declarations do not set forth facts that would be admissible in evidence.
4 As the Court may only consider admissible evidence, MJNA's unverified counterclaims, the
5 arguments of counsel in the Opposition, and Mr. Nelson's declarations cannot and do not in any
6 case create a genuine issue of material fact. Thus, the validity of the Notes is uncontroverted.

7 **2. It is undisputed that Plaintiff performed according to the Notes.**

8 Pursuant to the Notes, Plaintiff's sole obligation was to loan \$980,750. Plaintiff
9 submitted uncontroverted evidence demonstrating that Plaintiff dispersed \$980,750 to MJNA
10 and/or its wholly owned subsidiary Phytosphere. (Motion at Exh. 1, at ¶14). Therefore, Plaintiff
11 has established through admissible evidence that it performed its obligations under the Notes.
12 MJNA does not dispute and otherwise fails to submit any admissible evidence that Plaintiff
13 failed to disburse \$980,750.

14 **3. MJNA failed to repay Plaintiff in accordance with Notes and failed to issue**
15 **MJNA stock to Plaintiff upon Plaintiff's election to convert debt due and owing**
into MJNA stock.

16 Plaintiff established that MJNA failed to repay the \$980,750 to Roen under the terms of
17 the Notes. (Motion at Exh. 1, at ¶11). MJNA does not dispute that it never repaid the \$980,750.
18 Instead, MJNA argues that it did not have to repay the \$980,750. MJNA submits no affidavits or
19 declarations that set forth admissible evidence in support of its contention. Therefore, there
20 remains no genuine dispute that MJNA breached the Notes when it failed to repay Plaintiff
21 \$980,750.

22 Plaintiff established that it provided the requisite notice to MJNA that states that Plaintiff
23 was electing to convert all amounts owing under the Notes to MJNA stock. (Motion at Exh. 1-
24 D). MJNA does not dispute that it failed to issue the MJNA stock to Plaintiff. Therefore, there
25 remains no genuine dispute that MJNA breached the Notes when it failed to convert the amounts
26 due and owing under the Notes to MJNA stock.

27 The Notes set forth that the principal amounts of the Notes accrue interest until they are
28 repaid. The total amount due and owing under the \$400,000 Note was \$590,027.40 on the

1 Motion date. (Motion at exh. 1, at ¶13). The total amount due and owing under the \$80,750 Note
2 was \$112,496.92 on the Motion date. (Id.). The total amount due and owing under the \$500,000
3 Note was \$723,287.67 on the Motion date. (Id.). In total, MJNA owed Plaintiff \$1,425,811.99
4 pursuant to the Notes on the Motion date.

5 **4. Plaintiff is entitled to specific performance.**

6 Specific performance is a remedy for breach of contract and is equitable in nature. Steiner
7 v. Thexton, 226 P.3d 359, 369 (Cal. 2010); Golden W. Baseball Co. v. City of Anaheim, 31 Cal.
8 Rptr. 2d 378 (Cal. Ct. App. 1994). To obtain specific performance after a breach of contract,
9 Plaintiff must show: "(1) the inadequacy of [] legal remedy; (2) an underlying contract that is
10 both reasonable and supported by adequate consideration; (3) the existence of a mutuality of
11 remedies; (4) contractual terms which are sufficiently definite to enable the court to know what it
12 is to enforce; and (5) a substantial similarity of the requested performance to that promised in the
13 contract." Real Estate Analytics, LLC v. Vallas, 72 Cal. Rptr. 3d 835, 840-41 (Cal. Ct. App. 2008)
14 (internal citations omitted).

15 Plaintiff requests specific performance of the Notes, specifically that MJNA convert all
16 amounts due and owing to Plaintiff under the Notes into MJNA stock. The Court finds that: the
17 Notes are sufficiently definite, as set forth above; the Notes are reasonable and supported by
18 consideration as reflected in the Notes; Plaintiff performed under the Notes such that there is
19 mutuality of remedies; and Plaintiff's requested performance is identical to MJNA's obligation
20 in the Notes.

21 Finally, the Court finds that monetary damages could not adequately compensate Plaintiff
22 for the loss of stock that Plaintiff would have received had MJNA converted the amounts due
23 and owing under the Notes into MJNA stock. Specific performance is appropriate when money
24 damages are impracticable or somehow fail to do justice. Equitable Trust Co. v. Gallagher, 102
25 A.2d 538, 546-47 (Del. 1954); Wilkinson v. Wiederkehr, 124 Cal. Rptr. 2d 631, 639, 642 (Cal. Ct.
26 App. 2002); Thompson v. Beskeen, 35 Cal. Rptr. 676, 678 (Cal. Ct. App. 1963). The issuance of
27 shares is appropriate when monetary damages are not adequate to compensate the injured party.
28 Korabek v. Weaver Aircraft Corp., 149 P.2d 876 (Cal. Ct. App. 1944); Gilfallan v. Gilfallan, 141

1 P. 623, 624 (Cal. 1914); 13 Witkin, Summary of Cal. Law (2005) Equity, § 24, pp. 312-314;
2 Rest.2d Contracts, § 360, subd. (a); Rest. Contracts, § 361. A remedy at law is inadequate when
3 among other things, the shares have unique value to the purchaser or the shares cannot readily be
4 acquired on the open market, CX Inc. v. Clarington Capital Grp. LLC, CV-11-05191 PSG, 2012
5 WL 4097752 (N.D. Cal. Sept. 17, 2012); Korabek v. Weaver Aircraft Corp., 65 Cal. App. 2d 32,
6 38-39, 149 P.2d 876, 880 (1944); Bacon v. Grosse, 132 P. 1027, 1032 (Cal. 1913); Krouse v.
7 Woodward, 110 Cal. 638, 642-43, 42 P. 1084, 1085 (1895); 130 A.L.R. 920.

8 Pursuant to the terms of the Notes, the debt under the Notes is convertible into MJNA
9 stock at a rate well below the market price of MJNA's stock. The \$1,425,811.99 due and owing
10 is convertible into 45,027,135 shares of MJNA stock. (Motion at Exh. 1, at ¶13). MJNA shares
11 are thinly traded. 45,027,135 shares equal 7% of MJNA's shares that could be acquired on the
12 open market. The attempted purchase of 45,027,135 shares of MJNA stock on the open market
13 would unpredictably increase the price of MJNA's shares, such that it would be impracticable to
14 calculate the monetary value of 45,027,135 shares. Plaintiff derives unique value from a 7%
15 ownership stake in MJNA. Based thereon, Plaintiff cannot be adequately compensated by money
16 damages for 45,027,135 shares of MJNA stock. Therefore, as a remedy for MJNA's failure to
17 convert monies due and owing under the Notes, Plaintiff is entitled to specific performance of
18 the Notes.

19 IT IS FURTHER ORDERED that Plaintiff's Motion for Partial Summary Judgment is
20 hereby GRANTED.

21 IT IS FURTHER ORDERED that Plaintiff is entitled to Specific Performance of the
22 Notes and that MJNA, its agents, officers, employees, and/or transfer agent, shall issue to
23 Plaintiff 45,027,135 shares of MJNA stock within three (3) business days of the entry of this
24 Order.

25 COUNTERMOTION FOR NRCP 56(F) RELIEF

26 MJNA requested relief to conduct discovery pursuant to NRCP 56(f). An NRCP 56(f)
27 request can only be granted when the movant expresses in an affidavit how further discovery will
28 lead to the creation of a genuine issue of material fact. Choy v. Ameristar Casinos, Inc., 127 Nev.

1 Adv. Op. 78, 265 P.3d 698, 700 (2011); Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113,
2 118, 110 P.3d 59, 62 (2005). The requesting party must set forth the need for discovery in an
3 affidavit, as opposed to mere references in a memorandum of points and authorities. NRCP 56(f)
4 ("Should it appear from the affidavits of a party . . .); Choy, 127 Nev. Adv. Op. 78, 265 P.3d at
5 700 ("A request for a continuance contained within the opposition to the motion is not sufficient
6 to meet this unequivocal affidavit requirement."); Brae Transp., Inc. v. Coopers & Lybrand, 790
7 F.2d 1439, 1443 (9th Cir.1989) ("References in memoranda ... to a need for discovery do not
8 qualify...."). Furthermore, the party's affidavit must comply with NRCP 56(e).

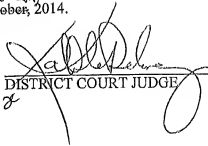
9 In support of its request for NRCP 56(f) relief, MJNA submits the Declaration of Vernon
10 A. Nelson and the Supplemental Declaration of Vernon A. Nelson, neither of which complies
11 with NRCP 56(e). Neither declaration sets forth how the requested discovery would lead to the
12 production of evidence that would create a question of material fact relevant to Plaintiff's
13 requested relief. Based on this, ~~law alone~~¹⁴⁸³, the Court finds grounds to deny MJNA's
14 countermotion for NRCP 56(f) relief. Additionally, the declarations request discovery that is
15 related to disputes unrelated to the narrowly tailored Motion. Specifically, MJNA seeks to take
16 Mr. Mackay's deposition to address: "issues outside the four corners of [Mr. Mackay's]
17 declaration;" "why Mackay advised Llamas to move Roen into Mercia before the filing of
18 MJNA's 8K and why Attorney Cleary was involved in that process;" and "his relationship with
19 Mona and the allegations in the Far West Action." (Opposition, at Exh. 1, on file herein). The
20 requested discovery does not pertain to Plaintiff's cause of action for breach of contract. The
21 Court finds that the declaration fails to establish how the requested discovery would lead to the
22 creation of a question of material fact. Likewise, Mr. Nelson's supplemental declaration filed the
23 night before the hearing reiterates the same requests but still does not establish how the requested
24 discovery will create a question of material fact. Therefore, the Court finds that MJNA has failed
25 to state adequate grounds on which NRCP 56(f) relief could be granted.

26 At the hearing on the matter, MJNA's counsel made an additional oral request to further
27 supplement the record with additional declarations that he claimed would comport with NRCP
28 56(f). The Court finds that even if MJNA was given leave to supplement its NRCP 56(f) request,

1 the proffered matters would not change the fact that the Notes are binding contracts or that
2 MJNA failed to repay the amounts due and owing according to the terms of the Notes.

3 IT IS FURTHER ORDERED that MJNA's request for relief pursuant to NRCP 56(f) is
4 DENIED, and MJNA's oral request to further supplement the record in support of NRCP 56(f)
5 relief is DENIED.

6 IT IS SO ORDERED this 3rd ^{November} day of ~~October~~, 2014.

7
8 
9 DISTRICT COURT JUDGE
10

11 Prepared and submitted by:

12 GORDON SILVER

13 
14 ERIKA PIKE TURNER

15 Nevada Bar No. 6454

16 DYLAN T. CICILIANO

17 Nevada Bar No. 12348

18 3960 Howard Hughes Pkwy., 9th Floor

19 Las Vegas, Nevada 89169

20 Tel: (702) 796-5555

21 Attorneys for Plaintiff, Cross-Defendant
22 and Third-Party Defendants

Reviewed by:

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

provided -

no signature
VERNON A. NELSON

Nevada Bar No. 6434

Lewis Brisbois Bisgaard & Smith, LLP

6385 S. Rainbow Blvd., Suite 600

Las Vegas, NV 89118

Attorneys for Defendant, Cross-claimant
and Third Party Plaintiff